39TH CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 7.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of December 21, 1865, information upon what charges and for what reasons Jefferson Davis is still held in confinement, and why he has not been put upon his trial.

JANUARY 10, 1866.—Read, ordered to lie on the table and be printed.

To the Senate of the United States:

I have received the following preamble and resolution adopted by the Senate on the 21st ultimo:

"Whereas the Constitution declares that 'in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed;' and whereas several months have elapsed since Jefferson Davis, late president of the so-called Confederate States, was captured and confined for acts notoriously done by him as such, which acts, if duly proved, render him guilty of treason against the United States, and liable to the penalties thereof; and whereas hostilities between the government of the United States and the insurgents have ceased, and not one of the latter, so far as is known to the Senate, is now held in confinement for the part he may have acted in the rebellion, except said Jefferson Davis: Therefore,

"*Resolved*, That the President be respectfully requested, if compatible with the public safety, to inform the Senate upon what charges or for what reasons said Jefferson Davis is still held in confinement, and why he has not been put upon his trial."

In reply to the resolution, I transmit the accompanying reports from the Secretary of War and the Attorney General, and at the same time invite the attention of the Senate to that portion of my message, dated the 4th day of December last, which refers to Congress the questions connected with the holding of circuit courts of the United States within the districts where their authority has been interrupted.

ANDREW JOHNSON.

WASHINGTON, *January 5*, 1866.

WAR DEPARTMENT,
Washington City, January 4, 1866.

SIR: To the annexed Senate resolution, passed December 21, 1865, referred to me by you for report, I have the honor to state:

1. That Jefferson Davis was captured by United States troops in the State of Georgia, on or about the 10th day of May, 1865, and by order of this depart-

ment has been, and now is, confined in Fortress Monroe, to abide such action as may be taken by the proper authorities of the United States government.

2. That he has not been arraigned upon any indictment or formal charge of crime, but has been indicted for the crime of high treason by the grand jury of the District of Columbia, which indictment is now pending in the supreme court of said District. He is also charged with the crime of inciting the assassination of Abraham Lincoln, and with the murder of Union prisoners of war, by starvation and other barbarous and cruel treatment towards them.

3. The President deeming it expedient that Jefferson Davis should first be put upon his trial before a competent court and jury for the crime of treason, he was advised by the law officer of the government that the most proper place for such trial was in the State of Virginia. That State is within the judicial circuit assigned to the Chief Justice of the Supreme Court, who has held no court there since the apprehension of Davis, and who declines for an indefinite period to hold any court there.

The matters above stated are, so far as I am informed, the reasons for holding Jefferson Davis in confinement, and why he has not been put upon his trial.

4. Beside Jefferson Davis, the following persons who acted as officers of the rebel government are imprisoned, to wit: Clement C. Clay, at Fortress Monroe, charged among other things with treason, with complicity in the murder of Mr. Lincoln, and with organizing bands of pirates, robbers, and murderers in Canada, to burn the cities and ravage the commerce and coasts of loyal States on the British frontier; D. L. Yulee, at Fort Pulaski, charged with treason while holding a seat in the United States Senate, and with plotting to capture the forts and arsenals of the United States, and with inciting war and rebellion against the government; S. R. Mallory, at Fort Lafayette, charged with treason, and with organizing and setting on foot piratical expeditions against the United States commerce and marine on the high seas.

Other officers of the so-called confederate government, arrested and imprisoned, have been released on parole to abide the action of the government in reference to their prosecution and trial for alleged offences, on their applications for amnesty and pardon. Among these are G. A. Trenholm, secretary of the treasury; John A. Campbell, assistant secretary of war; James A. Seddon, secretary of war; John H. Reagan, postmaster general; R. M. T. Hunter, senator; Alexander H. Stephens, vice-president, and sundry other persons of less note.

EDWIN M. STANTON,
Secretary of War.

The PRESIDENT.

IN THE SENATE OF THE UNITED STATES,
December 21, 1865.

Mr. Howard submitted the following resolution, which was considered by unanimous consent and agreed to:

Whereas the Constitution declares that "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed;" and whereas several months have elapsed since Jefferson Davis, late president of the so-called Confederate States, was captured and confined for acts notoriously done by him as such, which acts, if duly proved, render him guilty of treason against the United States, and liable to the penalties thereof; and whereas hostilities between the government of the United States and the insurgents have ceased, and not one of the latter, so far as is known to the Senate, is now held in con-

finement for the part he may have acted in the rebellion, except said Jefferson Davis: Therefore,

Resolved, That the President be respectfully requested, if compatible with the public safety, to inform the Senate upon what charges or for what reasons said Jefferson Davis is still held in confinement, and why he has not been put upon his trial.

ATTORNEY GENERAL'S OFFICE,
January 4, 1866.

SIR: I have the honor to acknowledge the receipt from you of a copy of the resolution of the Senate of the United States, of date the 21st of December, 1865. In that resolution the Senate respectfully request to be informed upon what charges and for what reasons Jefferson Davis is still held in confinement, and why he has not been put upon his trial.

When the war was at its crisis, Jefferson Davis, the commander-in-chief of the army of the insurgents, was taken prisoner, with other prominent rebels, by the military forces of the United States. It was the duty of the military so to take them. They have been heretofore and are yet held as prisoners of war. Though active hostilities have ceased, a state of war still exists over the territory in rebellion. Until peace shall come in fact and in law they can rightfully be held as prisoners of war.

I have ever thought that trials for high treason cannot be had before a military tribunal. The civil courts have alone jurisdiction of that crime. The question then arises, Where and when must the trials thereof be held?

In that clause of the Constitution mentioned in the resolution of the Senate, it is plainly written that they must be held in the State and district "wherein the crime shall have been committed." I know that many persons (of learning and ability) entertain the opinion that the commander-in-chief of the rebel armies should be regarded as constructively present with all the insurgents who prosecuted hostilities and made raids upon the northern and southern borders of the loyal States.

This doctrine of constructive presence, carried out to its logical consequences, would make all who had been connected with the rebel armies liable to trial in any State and district into which any portion of those armies had made the slightest incursion. Not being persuaded of the correctness of that opinion, but regarding the doctrine mentioned as of doubtful constitutionality, I have thought it not proper to advise you to cause criminal proceedings to be instituted against Jefferson Davis, or any other insurgent, in States or districts in which they were not actually present during the prosecution of hostilities.

Some prominent rebels were personally present at the invasions of Maryland and Pennsylvania; but all, or nearly all, of them received military paroles upon the surrender of the rebel armies. Whilst I think that those paroles are not ultimate protection for prosecutions for high treason, I have thought that it would be a violation of the paroles to prosecute those persons for crimes, before the political power of the government has proclaimed that the rebellion has been suppressed.

It follows from what I have said that I am of the opinion that Jefferson Davis and others of the insurgents ought to be tried in some one of the States or districts in which they in person respectively committed the crimes with which they may be charged. Though active hostilities and flagrant war have not for some time existed between the United States and the insurgents, peaceful relations between the government and the people in the States and districts in rebellion have not yet been fully restored. None of the justices of the Supreme

Court have held circuit courts in those States and districts since actual hostilities ceased.

When the courts are open, and the laws can be peacefully administered and enforced in those States whose people rebelled against the government—when, thus, peace shall have come, in fact and in law, the persons now held in military custody as prisoners of war, and who may not have been tried and convicted for offences against the laws of war, should be transferred into the custody of the civil authorities of the proper districts, to be tried for such high crimes and misdemeanors as may be alleged against them.

I think that it is the plain duty of the President to cause criminal prosecutions to be instituted before the proper tribunals, and at the proper times, against some of those who were mainly instrumental in inaugurating, and most conspicuous in conducting, the late hostilities.

I should regard it as a direful calamity if many whom the sword has spared the law should spare also; but I would deem it a more direful calamity still, if the Executive, in performing his constitutional duty of bringing those persons before the bar of justice to answer for their crimes, should violate the plain meaning of the Constitution, or infringe, in the least particular, the living spirit of that instrument.

I have the honor to be, most respectfully,

JAMES SPEED, *Attorney General.*

The PRESIDENT.

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